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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/963,734	09/26/2001	David A. Hammond	P1299CIP/CON	9668

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PATENT DOCKET DEPARTMENT
GARDNER CARTON & DOUGLAS LLC
191 N. WACKER DRIVE, SUITE 3700
CHICAGO, IL 60606

EXAMINER

MOHANDESI, JILA M

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 02/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

MF

Office Action Summary

Application No.

09/963,734

Applicant(s)

HAMMOND, DAVID A.

Examiner

Jila M Mohandes

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-6 and 8-10 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 6,460,702 (Hammond) and also over claims 1-20 of U.S. Patent 5,931,304 (Hammond). Although the conflicting claims are not identical, they are not patentably distinct from each other because the patents and the application are claiming common subject matter, as follows: a first aid kit comprising a carrying case, a plurality of packs containing a plurality of first aid products for the management of a particular first aid situation, and a guidebook, an instructional card and an overview card that are color and icon coordinated with the plurality of the packs. It would have been obvious to one of ordinary skill in the art at the time the invention was made to arrange the packs in any particular order depending on the contents of the packs for the management of different emergency situation. It further would have been obvious as is conventional to take

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emergency priorities into account when arranging the items in the first aid kits of Hammond ` 702 and Hammond `304 "so as to keep possible mistakes to a minimum,".

3. Claim 7 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over either the claims 1-10 of U.S. Patent No. 6,460,702 (Hammond) or claims 1-20 of U.S. Patent 5,931,304 (Hammond) in view of Campiglia (2,324,194). Each of Hammond ` 702 and Hammond `304 as described above discloses all the limitations of the claims except for the carrying case of first aid kit being collapsible accordion style case. Campiglia ` 194 discloses a first aid kit collapsible carrying case defining an interior, a plurality of compartments arranged in an accordion style columnar array and a plurality of packs carried in the compartments. See figure 1 embodiment and column 1, lines 35-42. Note that the folded regions of partition 12, 14 and the end walls appear to be folded accordion style. Therefore, it would have been obvious to one having ordinary skill in the art and in view of Campiglia ` 194 to make the carrying case of either Hammond ` 702 or Hammond `304 accordion style collapsible case to make the carrying case less bulky and cumbersome to use.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Campiglia `194 in view of Mashek (1,090,553) and admitted Prior art, First Responder

First Aid Kits (#1-#6), and the National Safety Council "First Aid Guide" cited by applicant. Campiglia discloses a first aid kit carrying case defining an interior, a plurality of compartments arranged in an accordion style columnar array and a plurality of packs carried in the compartments. See figure 1 embodiment and column 1, lines 35-42. Note that the folded regions of partition **12**, **14** and the end walls appear to be folded accordion style. However, if there is any doubt that the compartments of Campiglia are arranged in sequence in an accordion style columnar array, Mashek has been cited to show that there would be nothing unobvious about providing bellows between partitions of Campiglia to permit the compartments to either expand or contract easier and the first aid kit carry case to be compressed further for easier carrying and handling. Note also that Campiglia clearly teaches at column 1, lines 33-34, that first aid kit items "should be arranged so as to keep mistakes to minimum." Campiglia as modified above teaches all the limitations of the claims except for it does not appear to teach the first aid kit having a guide book and matching instructional cards and icons and colors for the packs. The admitted Prior Art, First Responder First Aid Kits (# 1 - #6) contains a plurality of packs containing a plurality of products for management of a particular first aid situation, having an overview card (as seen inside the cover of kit #2) with coordinating colors and matching icons between the various associated medical packs, guidebook, overview card, and instructional cards, etc., of the First Aid Kit so that the contents could be identified and located more easily. The National Safety Council "First Aid Guide" clearly establishes that it is old to assess and treat victims according to a triage system. Therefore, it would have been obvious to one having ordinary skill in the art and

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in view of the admitted Prior Art , First Responder First Aid Kits (# 1 - #6) to provide a guidebook , overview card and instructional card having coordinating colors and matching icons between the packs and the guidebook, overview card and instructional card to the carrying cases of Campiglia to help the user locate the medical packs and instructions more easily. It further would have been obvious as is conventional to take emergency priorities into account when arranging the items in Compiglia `194 "so as to keep possible mistakes to a minimum," as the reference instructs. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Claims 8-10 are directed to method of arranging the contents of a first aid kit and a method for administering first aid which is inherent in the organizing and use of the first aid kit carrying case of Campiglia `194 as modified above. With respect to claims 16-18, whether the material of the top is see-through or with indicia or any material would be a design choice as it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Response to Arguments

6. Applicant's arguments filed September 26, 2001 have been fully considered but they are not persuasive.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Mashek has been cited to show that there would be nothing unobvious about providing bellows between partitions of Campiglia to permit the compartments to either expand or contract easier and the first aid kit carry case to be compressed further for easier carrying and handling.

In response to applicant's argument that Campiglia and Mashek are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Campiglia and Mashek both teach a carry-on bag which is soft sided and expandable to accommodate whatever numbers of items the user chooses to insert.

In response to applicant's arguments against the references individually, one cannot show non-obviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown are first aid kits analogous to applicant's instant invention.

8. Telephone inquiries regarding the status of application or other general questions, by persons entitled to the information "should be directed to the group clerical personnel and not to the Examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148 or the Tech

Center 3700 Customer Service Center number is (703) 306-5648. For applicant's convenience, the Group Technological Center FAX number is (703) 872-9302. (Note that the Examiner cannot confirm receipt of faxes) Please identify Examiner Mohandesi of Art Unit 3728 at the top of your cover sheet of any correspondence submitted.

Inquiries only concerning the merits of the examination should be directed to Jila Mohandesi whose telephone number is (703) 305-7015. The examiner can normally be reached on Monday-Friday 7:30-4:00 (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (703) 308-2672.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g. copies of references cited, form PTO-1449, for PTO-892, etc. requests for copies of such papers should be directed to Donna Monroe at (703) 308-2209.

Check out our web-site at "www.uspto.gov" for fees and other useful information.



Jila M Mohandesi
Examiner
Art Unit 3728

J. Mohandesi
Patent Examiner

JMM
February 06, 2003